

**State Plating and Finishing Co. and General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-20136**

June 11, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

Upon a charge filed on December 17, 1981, by General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on State Plating and Finishing Co., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on January 28, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 11, 1981, following a Board election in Case 7-RC-16055, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about October 22, 1981, and more particularly by letter of January 18, 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 5, 1982, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On February 26, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on March 4, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Sum-

mary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

In its answer to the complaint, Respondent admits most of the factual allegations. It denies that the Union at all times since September 11, 1981, by virtue of the Board's Decision and Certification of Representative (not reported in volumes of Board Decisions), has been the exclusive representative of all employees in the appropriate unit for the purpose of collective bargaining. It also denies paragraph 10 of the complaint alleging Respondent's refusal to meet and bargain with the Union, except that Respondent admits that by letter dated January 18, 1982, it advised the Charging Party that it would not bargain with the Charging Party with respect to rates of pay, wages, hours of employment and other terms and conditions of employment of the unit of employees described in the complaint. The General Counsel contends that Respondent is, in effect, seeking to test the validity of the Board's Certification of Representative through the medium of the instant unfair labor practice proceeding, that Respondent is seeking to relitigate issues which were or could have been litigated in the prior representation proceeding, Case 7-RC-16055, and that the operative facts admitted or affirmatively pleaded suffice to establish that Respondent has violated Section 8(a)(1) and (5) of the Act. We find merit in the General Counsel's contention.

Review of the record herein, including the record in Case 7-RC-16055, reveals that, pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on November 14, 1980, in the appropriate unit, resulting in a total of 16 votes cast for, and 11 cast against the Union, with no challenged ballots. On November 21, 1980, the Employer (Respondent herein) timely filed objections to conduct affecting the results of the election. Following a hearing on the objections conducted on December 5, 1980, the Hearing Officer issued her Report on Objections, recommending that the Employer's objections be overruled in their entirety. Respondent thereafter filed with the Board exceptions to the Hearing Officer's report. On September 11, 1981, the Board issued its Decision and Certification of Representative, in which

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 7-RC-16055, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

it adopted the Hearing Officer's findings and recommendations and certified the Union.<sup>2</sup>

Thereafter, on October 22, 1981, the Union requested that Respondent enter into collective-bargaining negotiations with it. By letter dated January 18, 1982, Respondent informed the Charging Party Union that, in the opinion of Respondent's counsel, the Union was not properly certified (based upon the Employer-Respondent's exceptions to the Hearing Officer's Report on Objections), and for this reason, Respondent declined to bargain with the Union as requested.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>3</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the electroplating of automotive parts, appliance parts and miscellaneous die castings, and related products at its principal office and place of business at 840 Cottage Grove, S.E., Grand Rapids, Michigan, the only facility involved in this proceeding. During the calendar year ending December 31, 1981, which period is representative of its operations during all times material herein, Respondent in the course and conduct of its business operations manufactured, sold and distributed at its Grand Rapids, Michigan, place of

business products valued in excess of \$500,000, of which products valued in excess of \$50,000 were shipped from said place of business directly to points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE UNFAIR LABOR PRACTICES

###### A. *The Representation Proceeding*

###### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by Respondent at its facility located at 840 Cottage Grove, S.E., Grand Rapids, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

###### 2. The certification

On November 14, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 11, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

###### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about October 22, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 18, 1982, and continuing at all times thereafter to date, Respondent

<sup>2</sup> Thus, while Respondent in its answer to the complaint denied par. 8 thereof, alleging the Union's exclusive representative status for the purpose of collective bargaining since September 11, 1981, by virtue of the Board's Decision and Certification of Representative, we conclude based on the entire record, including the Board's Decision and Certification of Representative, that the Union at all times since September 11, 1981, has been and is now the exclusive representative of all employees in the appropriate unit set forth in the complaint for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

<sup>3</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since January 18, 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. State Plating and Finishing Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs,

Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time employees employed by Respondent at its facility located at 840 Cottage Grove, S.E., Grand Rapids, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 11, 1981, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 18, 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, State Plating and Finishing Co., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time employees employed by Respondent at its facility located at 840 Cottage Grove, S.E., Grand Rapids,

Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Grand Rapids, Michigan, facility copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with General Teamsters Union Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time employees employed by us at our facility located at 840 Cottage Grove, S.E. Grand Rapids, Michigan; but excluding all office clerical employees, guards and supervisors as defined in the Act.

STATE PLATING AND FINISHING CO.